IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.A No.57 of 2004

Reserved on: June 15, 2007

Decided on : July 3, 2007.

Suraj Prakash and another **....Appellants.**

VERSUS

State of Himachal Pradesh **....Respondent.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?

For the Appellants : M/s T.R. Chandel, V.S. Rathore & Vinay Thakur, Advocates.

For the Respondent : Mr. D.S. Nainta, Deputy Advocate General.

Mr. K.D. Sood, counsel for applicant Manik Sharma.

Surjit Singh, Judge

Appellants Panjku Ram and Suraj Prakash are related to each other as father and son, respectively. They are aggrieved by the judgment of the Sessions Court, whereby they have been convicted of offence punishable under Section 307 read with Section 34 IPC and sentenced to undergo life imprisonment and to pay compensation of Rs.1,00,000/- each to the victim of the offence.

2. First, the prosecution case may be noticed. Appellant Panjku Ram and PW-7 Brij Lal, the father of the injured, are residents of the same village, i.e. village Yol in Kangra District. They had some dispute with regard to a path. Some criminal cases with respect to the aforesaid dispute had also been instituted by them against each other. On 26.7.2000 around

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Whether the reporters of the local papers may be allowed to see the Judgment?

7.50 p.m. when PW-9 Manik Sharma, son of PW-7 Brij Lal, was returning home after playing football in the ground of the village school and reached a point about 20 metres from his house, the two appellants are alleged to have thrown acid on his face and tried to forcibly pour some acid in his mouth also. Acid thrown on the face affected the eyes instantaneously. Manik Sharma cried "*Bachao Bachao* – I cannot see". On hearing his cries, PW-10 Ram Chand, occupant of a nearby house, accompanied by his wife rushed to the spot. He and his wife saw that Manik Sharma had acid on his face and body. Some people had already gathered there and were saying that father of Manik Sharma be informed. PW-10 Ram Chand then asked his son to call Manik Sharma's father. Soon thereafter Brij Lal (PW-7), the father of Manik Sharma, reached the spot. He threw a bucket of water on the head and the face of his son Manik Sharma and also wrapped him in a sheet of cloth which someone brought from the neighbourhood. A van was arranged for carrying Manik Sharma to the hospital. As soon as Manik Sharma was helped to board the van and it started for the hospital, PW-7 Brij Lal enquired from Manik Sharma as to what had happened. PW-10 Ram Chand, PW-11 Ram Prakash and two other persons named Boby and R.P. Sharma were also in the van when PW-7 Brij Lal made the aforesaid enquiry from his son. Manik Sharma (PW-9) told that appellant Panjku Ram and his son Suraj Prakash, the other appellant, had thrown acid on his face and also tried to administer some acid to him forcibly and when he cried for help they ran away declaring that what they had done to him was enough to kill him but still if he survived, his life would not be spared. Manik Sharma was medically examined. His eyes were found to have been extensively damaged. Also, it was found that 2/3rd of his mouth cavity and tongue had been badly damaged by the acid. The injury to the eyes has resulted in the total blindness of Manik Sharma.

3. Matter was reported to the police by PW-7 Brij Lal, the father of Manik Sharma, because by the time Manik Sharma reached the hospital, he was unable to speak, on account of the severe burn injuries caused by acid to his tongue and mouth cavity and so he was unable to lodge the report.

4. Police investigated the matter. It visited the spot and found one can on the spot. It also found that some fallen leaves of trees, at the site of the incident, had got corroded by acid. The can and those leaves were taken into possession. Clothes of injured Manik Sharma, which he was wearing at the time of the incident, were also taken into possession. The can and the clothes of the injured were sent to the Chemical Examiner, who opined that the same had particles of sulphuric acid on them. Clothes of the two appellants, which they were wearing at the time of their arrest on 28.7.2000, were also taken into possession and sent to the Chemical Examiner but no traces of any acid were found thereon.

5. Trial Court recorded the evidence adduced by the prosecution. Appellants were also examined under Section 313 of the Code of Criminal Procedure. They pleaded that they had been falsely implicated by PW-7 Brij Lal, because of the dispute, over path, going on between them and Brij Lal.

6. It was suggested to the prosecution witnesses, during the course of their cross-examination by the defence, that Manik Sharma PW-9 had attempted to commit suicide by consuming acid, because of his having failed in BA 1st year examination and also on account of frustration in love. It was suggested that Manik Sharma had love affair with a girl of the same village but the parents of the girl and even the father of Manik Sharma were against that affair and asked him to end the affair and this caused frustration to him.

7. Trial Court convicted and sentenced both the appellants, as aforesaid. We have heard the learned counsel for the appellants and the learned Additional Advocate General and perused the evidence. Submissions made on behalf of the appellants are multifold. We have considered all of them in the light of the evidence on record. We proceed to take up and discuss them, one by one.

8. First submission made by the learned counsel for the appellants is that the very genesis of the alleged occurrence is doubtful, inasmuch as even though PW-10 Ram Chand says that he heard the cries "*Bachao Bachao"* and then rushed to the spot in the company of his wife and saw Manik Sharma (PW-9) having acid on his face and body, PW-9 Manik Sharma himself nowhere says that he had raised any such cries. He submitted that the omission on the part of PW-9 Manik Sharma to say that he raised cries suggests that he did not raise any cries and this fact probablizes the defence plea, as suggested to Manik Sharma and his father Brij Lal (PW-7) that Manik Sharma, on account of his failure in the examination and frustration in love, attempted to commit suicide.

9. We find ourselves unable to accept the submission. Manik Sharma was a young man of just 18 years when the incident took place. His statement was recorded a year later when his age was 19 years old. A young man of just 18 or 19 sustaining corrosive injuries to his eyes, caused by throwing acid, resulting in complete blindness, cannot be expected to be mentally so alert as to state each and every fact concerning the incident. Such a man would get completely shattered. Generally, no person of his age would come to terms with what had happened to him. He would always be depressed because of the loss of eyesight and disfiguration of face. Loss of eyesight and that too at a young age is like loss of the whole world to the concerned person. Such a person, when in the witness box and narrating the incident that caused loss of eyesight and defacement is

bound to be in much more lower spirits than in normal course and, therefore, likely to forget many facts even though they may be material and relevant.

10. Next submission of the learned counsel for the appellants is that Manik Sharma, in his statement as PW-9, has nowhere stated that when he was put into the van and was being driven to the hospital he told his father, on enquiry by him, that acid had been thrown into his eyes and it was also sought to be forcibly administered to him and, therefore, the testimony of PW-7 Brij Lal, the father of Manik Sharma, PW-10 Ram Chand and PW-11 Ram Prakash to this effect cannot be believed. For the same reasons, which we have given hereinabove to reject the first submission, we reject this submission also.

11. Another submission made by the learned counsel for the appellants is that PW-9 Manik Sharma did not name anybody as the assailants on the spot and this indicates that either he was not aware as to who were the assailants or he himself had tried to consume the acid to end his life because of the aforesaid two reasons. This submission is also liable to be rejected for those very reasons which have been given for rejecting the earlier two submissions. The additional reason is that at that particular moment he was not having only the shock of having lost the eyesight but was also undergoing physical trauma of acute burning sensation in the eyes caused by the acid. In such a mental and physical state the victim will be more concerned about his health and how to get relieved of pain than seeking action against those who victimized him.

12. It was then argued that the story narrated by PW-9 Manik Sharma, the victim, is most unnatural and hence unbelievable. It was urged that it is impossible that one man will catch hold of a person by his mouth and the other would try to pour acid into it, because in that process the assailants are themselves at the risk of getting injured. We are not

convinced by the submission. Courts have come across many cases of acid throwing where the assailants themselves also get injured, which implies that the perpetrator of this type of crime motivates himself to an extent that he runs the risk of injuring himself while committing the crime and if the assailant happens to be somewhat intelligent, he would be taking precautions like covering his hands and forearms etc. to avoid injury to self.

13. Drawing our attention to the testimony of PW-10 Ram Chand, PW-20 SI Surender Kumar, Investigating Officer, and the statement Ex. PW-20/E made by PW-10 Ram Chand to the Police, learned counsel for the appellants further argued that when Ram Chand reached the spot, PW-9 Manik Sharma had been crying they had thrown acid on him, but he did not explain who 'they' were and this indicated that PW-9 Manik Sharma did not know who had thrown the acid.

14. PW-10 Ram Chand, while in the witness box, did not say that when he reached the spot, PW-9 Manik Sharma was saying that "those persons" had thrown acid on him. A suggestion was put to him in the cross-examination that to the Police he had made such a statement. He denied the suggestion. Thereafter, when PW-20 SI Surender Kumar, the Police Officer to whom PW-10 Ram Chand had made statement Ex. PW-20/E, under Section 161 of the Code of Criminal Procedure, was shown the statement and it was suggested to him that its portions A to A and B to B had not been stated by Manik Sharma but he had introduced the same of his own, he also denied the suggestion. The making of this suggestion to PW-20 SI Surender Kumar indicates that portions A to A and B to B were not stated by PW-10 Ram Chand. What is recorded in these two portions, A to A and B to B, of Ex. PW-20/E, is as follows:

Portion A to A

"And Panjku Ram and his son Suraj Prakash ran away from the side of the bamboo grove towards their house and entered it."

Portion B to B

"As soon as I went running downwards Monu (nickname of PW-9 Manik Sharma, the victim) told that "they" had thrown acid on him……."

15. It may be stated that portion B to B is in continuity with each other and form a sequence. Therefore, for understanding the meaning of portion B to B, as reproduced above, portion A to A is also required to be looked into. In portion A to A it is recorded that Panjku Ram and his son Suraj Prakash had run away from the side of bamboo tree towards their house. In portion B to B it is recorded that Monu (PW-9 Manik Sharma) told that they had thrown the acid. Therefore, the word "they" is to be taken to mean Panjku Ram and his son Suraj Prakash, who were seen running away from the spot. In any case, portions A to A and B to B of Ex. PW-20/E do not amount to evidence. These portions are part of statement Ex. PW-20/E, under Section 161 of the Code of Criminal Procedure, which, by virtue of the provision of Section 162 of the Code of Criminal Procedure, can be used only for contradicting the maker of it. Manik Sharma himself was not confronted with this statement and, therefore, it cannot be used even for contradicting him. Even if he were confronted with the statement particularly the aforesaid two portions, that would have made no difference because the testimony of PW-9 Manik Sharma is in no way contradictory to these portions. He has nowhere stated that when Ram Chand reached the spot he did not tell him the names of the persons who had thrown acid on him. The only thing is that he omitted to say so in his testimony as PW-9. The omission, as noticed hereinabove, is explainable.

16. Learned counsel then drew our attention to statement Ex. PW-5/A of Brij Lal Sharma (PW-7), under Section 154 of the Code of Criminal Procedure, on the basis of which formal FIR was recorded and pointed out that the time of occurrence in the said statement had been changed from 7.30 p.m. to 7.50 p.m. by overwriting and no explanation for the same had been put forward. It is true that the time has been changed from 7.30 p.m. to 7.50 p.m. by overwriting, but no explanation for this overwriting was sought by the defence during the course of the trial, when PW-14 ASI Amar Singh, who recorded the statement, and PW-7 Brij Lal Sharma, who had made the statement, were in the witness box. Therefore, it is too late in the day for the appellants to raise this contention. In any case this change by overwriting in the timing of the occurrence does not affect the merits of the case. Further, it is made out from the record that the change had been made at the time when the statement was recorded and not at some later point of time to suppress something material. The reason for our observing so is that this change apparently took place at the time of the making of the statement. The time of recording this statement is 9.45 p.m. In the formal FIR Ex. PW-5/B, which was recorded at the Police Station at 10.20 p.m., the same night, the time is written as 7.50 p.m. and not the original time 7.30 p.m. And there is no change of timing of the incident in the formal FIR.

17. Yet another submission made on behalf of the appellants is that PW-9 Manik Sharma was having a love affair with a girl of the same village to which not only the parents of the girl, but also the father of Manik Sharma objected and this caused frustration to him (Manik Sharma). It was also submitted that Manik Sharma had failed in BA 1st year Examination and that caused depression to him. It is urged that because of the alleged frustration and depression, Manik Sharma attempted to commit suicide by consuming acid. Manik Sharma was a young man of just 18 at the time

when the incident took place. (The poor boy is no more. It had been pointed out during the course of hearing of the appeal that he died in the year 2005). On the day of the incident, admittedly, he had gone to play football in the village school playground. It is not believable that a young man, who also happens to be a sportsman, would get so frustrated because of the objection to his alleged love affair with a girl of his village by the parents of the girl and his own father and/or on account of his failure in a college examination that he would adopt a highly crude method of committing suicide like consuming concentrated sulphuric acid and that too while returning home after playing.

18. Not only this, there is absolutely no evidence in support of the plea that Manik Sharma had been having an affair with a village girl. Further, if a person tries to commit suicide by consuming concentrated sulphuric acid, which is though highly improbable, he would not first throw the acid into his eyes, as has happened in this case. This fact by itself negates the theory of Manik Sharma having sustained the injuries in an attempt to commit suicide.

19. Yet another submission made on behalf of the appellants is that the investigation of the case has been done in a partisan manner. Our attention was drawn to the testimony of PW-10 Ram Chand and his statement to the Police under Section 161 of the Code of Criminal Procedure Ex. PW-20/E and it was urged that even though Ram Chand had not seen anybody running away from the spot, the Investigating Officer, PW-20 SI Surender Kumar, tried to introduce a version in Ram Chand's statement Ex. PW-20/E that he had seen the two appellants running away from the spot. Ram Chand, in his deposition as PW-10, denied having made such a statement to the Police. PW-20 SI Surender Kumar also denied the suggestion put to him in the cross-examination that portion A to A of Ex. PW-20/E, which is to the effect that the maker of the statement had

seen the two appellants running away from the spot, had not been made by PW-10 Ram Chand but he had introduced it of his own. The contradictory statements of PW-10 Ram Chand and PW-20 SI Surender Kumar with regard to this fact lead us to nowhere. Ram Chand denied having made such a statement and SI Surender Kumar denies that he introduced the statement of his own. Under these circumstances, it cannot be said which of the two witnesses has told a lie. Therefore, it cannot be said that the Police did not conduct the investigation in a fair manner. Even if it be assumed for the sake of argument that this story was introduced by the Investigating Officer, namely PW-20 SI Surender Kumar, of his own that would not affect the testimony of PW-9 Manik Sharma, the victim, in any way, as also the testimony of his father Brij Lal Sharma PW-7, PW-10 Ram Chand and PW-11 Ram Prakash, that immediately after having been moved into the van, Manik Sharma, on being asked by his father PW-7 Brij Lal Sharma about the cause of the injury, told that Panjku Ram and his son Suraj Prakash, the two appellants, had thrown the acid into his eyes. Above stated position apart, it is not permissible to use statement Ex. PW-20/E, which is under Section 161 of the Code of Criminal Procedure, as a piece of evidence in support of the submission made by the learned counsel. Statement under Section 161 of the Code of Criminal Procedure cannot be used for any purpose, except for contradicting its maker, in view of the bar contained in Section 162 of the Code of Criminal Procedure.

20. Next it was submitted by the learned counsel for the appellants that PW-9 Manik Sharma had made material improvements in his earliest version and, therefore, he was not a trustworthy witness. It was submitted that to his father PW-7 Brij Lal Sharma, as per contents of Ex. PW-5/A, statement under Section 154 of the Code of Criminal Procedure made by Brij Lal Sharma to the Police, Manik Sharma told only this much that Panjku Ram and his son Suraj Prakash had thrown acid on him. He

did not tell that they had also poured acid into his mouth. It is true that in the statement Ex. PW-5/A there is mention that Manik Sharma told that acid was attempted to be poured into his mouth also, but while in the witness box, Manik Sharma (PW-9) testified that after throwing the acid into his eyes the two appellants attempted to pour some of acid into his mouth which caused burn injuries to his mouth cavity and tongue. The omission on the part of Manik Sharma to tell his father that acid was attempted to be poured into his mouth also is explainable. Medico legal evidence suggests that he had severe burn injures caused by acid in 2/3rd of his mouth cavity and the tongue which rendered him completely speechless by the time he reached hospital. May be that on account of the injury to the mouth cavity and the tongue, which affected his speech, Manik Sharma found it difficult to narrate the incident in full. Further Manik Sharma's statement that acid was attempted to be poured into his mouth stands corroborated by medico legal evidence which is to the effect that tongue and 2/3rd of the mouth cavity were severely affected by acid burns. Therefore, it cannot be said that PW-9 Manik Sharma had made any improvements in his earliest version.

21. Lastly, it was submitted that the punishment awarded by the trial Court is too severe and some leniency may be shown. The two appellants, who are father and son, have committed very heinous crime. They threw acid into the eyes of a young lad of 18. Then they tried to kill him by pouring acid into his mouth. Their acts of throwing acid into the eyes and pouring it into the mouth of the victim clearly amount to the offence of attempted murder. As a matter of act, the poor boy is no more, though he has died only during the pendency of the appeal in year 2005. Looking to the gravity of the offence as also the fact that the offence has been committed by the duo of a father and a son, in furtherance of their

common intention, the two appellants, in our considered view, deserve no leniency. Hence, the plea of leniency is also rejected.

22. It was submitted by the learned counsel, engaged by the father of the victim that the victim of the offence having died, the amount of compensation awarded by the trial Court may be ordered to be paid to his father. Learned counsel representing the appellants argued that the victim having died and the compensation having been awarded to him, the father of the victim is not entitled to any compensation.

23. We see no merit in the submission made by the learned counsel for the appellants. Compensation had been awarded to the victim when he was alive. Therefore, it became his estate. This Court only suspended the order of recovery of compensation pending disposal of the appeal. Now, when the appeal is going to be dismissed, the order of compensation will get restored.

24. As a result of the abovestated position, appeal is dismissed. As regards the amount of compensation awarded to the victim of the offence, who is no more, we order that 80% of it be paid to the mother of the victim, if she be alive, and 20% to his father. In case the mother of the victim is not alive, the whole of the compensation be paid to his father.

Appeal stands disposed of accordingly.

(Surjit Singh), J.

July 3, 2007(sd) **(Kuldip Singh), J**